

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

ONEBEACON AMERICA INSURANCE
COMPANY,

Plaintiff,

- against -

COLGATE-PALMOLIVE COMPANY and
LIBERTY MUTUAL INSURANCE COMPANY,

Defendants.

Index No. 651193/2011

**FIRST AMENDED ANSWER AND
COUNTERCLAIMS**

COLGATE-PALMOLIVE COMPANY,

Counterclaim
Plaintiff,

- against -

ONEBEACON AMERICA INSURANCE
COMPANY, NATIONAL INDEMNITY COMPANY,
and RESOLUTE MANAGEMENT, INC.

Counterclaim
Defendants.

Count I: Declaratory Judgment
Counts II-III: Breach of Contract
Counts IV-V: Tortious Interference
Counts VI-VII: Bad Faith
Count VIII: Third-Party Beneficiary
Count IX: Mass. G.L. c. 93A § 11
Count X: New York G.B.L. § 349

Defendant and Counterclaim Plaintiff Colgate-Palmolive Company

("Colgate" or "Defendant"), by its undersigned counsel, for its First Amended Answer to the First Amended Complaint for Declaratory Relief, and for its First Amended Counterclaims, states as follows:

INTRODUCTION

1. Colgate denies the allegations in Paragraph 1 of the First Amended Complaint except that Colgate admits that the First Amended Complaint filed by OneBeacon America Insurance Company ("OneBeacon" or "Plaintiff") includes two

counts seeking declaratory judgment and that OneBeacon sold Colgate certain general and umbrella/excess liability policies (the “OneBeacon Policies”).

2. Colgate denies the allegations in Paragraph 2 of the First Amended Complaint except Colgate admits that OneBeacon sold Colgate certain commercial general liability and umbrella/excess policies.

3. Colgate denies the allegations in Paragraph 3 of the First Amended Complaint except Colgate admits that there is a dispute between Colgate and OneBeacon with regard to OneBeacon’s defense of certain asbestos bodily injury claims filed against Colgate (the “Talc Cases”).

THE PARTIES

4. Colgate denies information or knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraph 4 of the First Amended Complaint.

5. Colgate admits the allegations in Paragraph 5 of the First Amended Complaint.

6. Colgate denies information or knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraph 6 of the First Amended Complaint.

JURISDICTION

7. Colgate denies the allegations in Paragraph 7 of the First Amended Complaint except Colgate admits that there is an actual, immediate, and justiciable controversy between Colgate and OneBeacon concerning OneBeacon’s defense of the Talc Cases.

8. The allegations in Paragraph 8 of the First Amended Complaint do not require a response as they state a legal conclusion. To the extent a response is required, Colgate denies the allegations in Paragraph 8 of the First Amended Complaint.

9. The allegations in Paragraph 9 of the First Amended Complaint do not require a response as they state a legal conclusion. To the extent a response is required, Colgate denies the allegations in Paragraph 9 of the First Amended Complaint.

INSURANCE POLICIES

10. Colgate denies the allegations in Paragraph 10 of the First Amended Complaint except that Colgate admits that OneBeacon sold Colgate certain primary general liability and excess policies, as set forth in Attachment A to the First Amended Complaint.

11. Colgate denies the allegations in Paragraph 11 of the First Amended Complaint and refers to the contents of the OneBeacon Policies, as those documents speak for themselves.

12. Colgate denies the allegations in Paragraph 12 of the First Amended Complaint and refers to the contents of the OneBeacon Policies, as those documents speak for themselves.

13. Colgate denies the allegations in Paragraph 13 of the First Amended Complaint and refers to the contents of the OneBeacon Policies, as those documents speak for themselves.

14. Colgate denies the allegations in Paragraph 14 of the First Amended Complaint and refers to the contents of the OneBeacon Policies, as those documents speak for themselves.

15. Colgate denies the allegations in Paragraph 15 of the First Amended Complaint and refers to the contents of the OneBeacon Policies, as those documents speak for themselves.

16. Colgate admits the allegations in Paragraph 16 of the First Amended Complaint.

THE TALC CLAIMS

17. Colgate admits the allegations in Paragraph 17 of the First Amended Complaint and states that the Bernard and Tedrick cases will be referenced herein as the “Bernard/Tedrick Cases.”

18. Colgate admits the allegations in Paragraph 18 of the First Amended Complaint to the extent they allege that Colgate has been named as a defendant in the cases set forth in Attachment B to the First Amended Complaint. Colgate otherwise denies the allegation in Paragraph 18 and refers to the complaints filed in the cases set forth in Attachment B to the First Amended Complaint for the allegations contained therein, as those documents speak for themselves.

19. Colgate denies the allegations in Paragraph 19 of the First Amended Complaint and refers to the complaints filed in the cases set forth in Attachment B to the First Amended Complaint for the allegations contained therein, as those documents speak for themselves.

20. Colgate denies the allegations in Paragraph 20 of the First Amended Complaint except Colgate admits that OneBeacon and Liberty Mutual Insurance Company (“Liberty”) agreed to participate in the defense of the Bernard/Tedrick Cases subject to certain reservations of rights to withdraw from the defense of the cases or to decline to provide indemnity for any settlement or verdict under certain circumstances.

21. Colgate denies the allegations in Paragraph 21 of the First Amended Complaint except Colgate admits that OneBeacon retained McGivney & Kluger, P.C. to defend the Bernard/Tedrick Cases.

22. Colgate denies the allegations in Paragraph 22 of the First Amended Complaint except Colgate admits that it retained the firm of Morgan, Lewis & Bockius, LLP.

23. Colgate denies the allegations in Paragraph 23 of the First Amended Complaint except Colgate admits that it retained the firm of Quinn Emanuel Urquhart & Sullivan, LLP.

24. Colgate denies the allegations in Paragraph 24 of the First Amended Complaint.

25. Colgate denies the allegations in Paragraph 25 of the First Amended Complaint.

26. Colgate denies the allegations in Paragraph 26 of the First Amended Complaint.

27. Colgate denies the allegations in Paragraph 27 of the First Amended Complaint.

28. Colgate denies the allegations in Paragraph 28 of the First Amended Complaint.

29. Colgate denies the allegations in Paragraph 29 of the First Amended Complaint except Colgate admits that it has demanded that OneBeacon pay certain of Colgate's defense costs in the Bernard/Tedrick Cases as well as in the cases set forth in Attachment B to the First Amended Complaint.

30. Colgate denies the allegations in Paragraph 30 of the First Amended Complaint.

31. Colgate denies the allegations in Paragraph 31 of the First Amended Complaint.

32. Colgate denies the allegations in Paragraph 32 of the First Amended Complaint.

33. Colgate denies the allegations in Paragraph 33 of the First Amended Complaint.

34. Colgate denies the allegations in Paragraph 34 of the First Amended Complaint except Colgate admits that OneBeacon stopped paying the defense costs incurred by Colgate in its defense of the Bernard/Tedrick Cases.

35. Colgate denies the allegations in Paragraph 35 of the First Amended Complaint.

36. Colgate denies the allegations in Paragraph 36 of the First Amended Complaint.

37. Colgate denies the allegations in Paragraph 37 of the First Amended Complaint except Colgate admits that disputes have arisen between

OneBeacon and Colgate with respect to OneBeacon's duty to defend and to pay defense costs and Colgate's right to independent counsel for the Bernard/Tedrick Cases and the cases set forth in Attachment B to the First Amended Complaint.

FIRST COUNT
(Declaratory Judgment-Bernard/Tedrick Cases)

38. Colgate repeats and realleges Paragraphs 1-37 of this Answer as if fully set forth herein.

39. Colgate denies the allegations in Paragraph 39 of the First Amended Complaint and refers to the contents of the OneBeacon Policies, as those documents speak for themselves.

40. Colgate denies the allegations in Paragraph 40 of the First Amended Complaint and refers to the contents of the OneBeacon Policies, as those documents speak for themselves.

41. Colgate denies the allegations in Paragraph 41 of the First Amended Complaint and refers to the contents of the OneBeacon Policies, as those documents speak for themselves.

42. Colgate denies the allegations in Paragraph 42 of the First Amended Complaint and refers to the contents of the OneBeacon Policies, as those documents speak for themselves.

43. Colgate denies the allegations in Paragraph 43 of the First Amended Complaint and respectfully requests that the Court deny the requests for relief therein.

Colgate denies each and every allegation set forth in the WHEREFORE section of the First Count of OneBeacon's First Amended Complaint.

SECOND COUNT
(Declaratory Judgment-Talc Claims)

44. Colgate repeats and realleges Paragraphs 1-43 of this Answer as if fully set forth herein.

45. Colgate denies the allegations in Paragraph 45 of the First Amended Complaint except Colgate admits that disputes have arisen between OneBeacon and Colgate with respect to OneBeacon's duty to defend and Colgate's right to independent counsel for the Bernard/Tedrick Cases and the cases set forth in Attachment B to the First Amended Complaint.

46. Colgate denies the allegations in Paragraph 46 of the First Amended Complaint and refers to the contents of the OneBeacon Policies, as those documents speak for themselves.

47. Colgate denies the allegations in Paragraph 47 of the First Amended Complaint and refers to the contents of the OneBeacon Policies, as those documents speak for themselves.

48. Colgate denies the allegations in Paragraph 48 of the First Amended Complaint and refers to the contents of the OneBeacon Policies, as those documents speak for themselves.

49. Colgate denies the allegations in Paragraph 49 of the First Amended Complaint and refers to the contents of the OneBeacon Policies, as those documents speak for themselves.

Colgate denies each and every allegation set forth in the WHEREFORE section of the Second Count of OneBeacon's First Amended Complaint.

COLGATE'S AFFIRMATIVE DEFENSES

Further answering, Colgate states the following as affirmative defenses to the First Amended Complaint:

FIRST AFFIRMATIVE DEFENSE

OneBeacon's First Amended Complaint fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

OneBeacon's claims are barred by the doctrine of estoppel.

THIRD AFFIRMATIVE DEFENSE

OneBeacon's claims are barred by the applicable statute of limitations.

FOURTH AFFIRMATIVE DEFENSE

OneBeacon's claims are barred by the doctrine of laches.

FIFTH AFFIRMATIVE DEFENSE

OneBeacon's claims are barred by their bad faith conduct.

SIXTH AFFIRMATIVE DEFENSE

OneBeacon's claims are barred by the doctrine of unclean hands.

SEVENTH AFFIRMATIVE DEFENSE

OneBeacon's claims are barred by the doctrine of waiver.

EIGHTH AFFIRMATIVE DEFENSE

OneBeacon's claims are barred and precluded by the provisions, terms, and conditions of the OneBeacon Policies.

NINTH AFFIRMATIVE DEFENSE

OneBeacon's claims fail because OneBeacon breached the OneBeacon Policies.

Colgate reserves the right to supplement or amend these affirmative defenses as facts supporting further affirmative defenses are discovered.

**COLGATE'S FIRST AMENDED COUNTERCLAIMS AGAINST ONEBEACON
AMERICA INSURANCE COMPANY, RESOLUTE MANAGEMENT, INC., AND
NATIONAL INDEMNITY COMPANY**

Pursuant to CPLR §§ 3011 and 3019, Counterclaim Plaintiff Colgate, for its First Amended Counterclaims against Plaintiff and Counterclaim Defendant OneBeacon, Counterclaim Defendant National Indemnity Company ("NICO"), and Counterclaim Defendant Resolute Management, Inc. ("Resolute"), states as follows:

INTRODUCTION

50. Colgate's First Amended Counterclaims arise out of the failure and refusal of OneBeacon, NICO and Resolute to honor the promises contained in the OneBeacon Policies by paying for all reasonable defense and indemnity costs incurred or to be incurred by Colgate in the lawsuits set forth in Attachment A to these First Amended Counterclaims (the "Talc Cases"). Because of conflicts of interest between OneBeacon, NICO, and Resolute on the one hand and Colgate on the other, OneBeacon is obligated to pay the reasonable fees of Colgate's independent defense counsel. Instead, however, OneBeacon, NICO, and Resolute have put their own financial interests ahead of their legal and contractual obligations to their policyholder, Colgate.

51. NICO is a reinsurance company that reinsures the asbestos and environmental (A&E) risks of OneBeacon's policyholders, including Colgate. NICO, however, provides more than reinsurance to OneBeacon. In addition to being OneBeacon's reinsurance company, pursuant to an agreement with OneBeacon, NICO

also was assigned and/or assumed all claims handling and claims payment obligations under the OneBeacon Policies.

52. Upon information and belief, NICO then agreed with claims handler Resolute that Resolute would administer certain of the claims handling and payment obligations assumed by NICO for the OneBeacon Policies. NICO's agreement with Resolute, the exact nature and scope of which Colgate is presently unaware, is referred to henceforth as the "NICO-Resolute Contract."

53. Upon information and belief, by entering into the NICO-Resolute Contract, Resolute took on a duty to Colgate, an intended third party beneficiary of the NICO-Resolute Contract. Resolute failed to discharge its contractual obligations by, among other things, refusing to pay the reasonable fees of Colgate's counsel in the Talc Cases and threatening to unilaterally contact and reach settlements with the plaintiffs in the Talc Cases (the "Talc Plaintiffs") without Colgate's authorization and against the advice of Colgate's independent defense counsel. Resolute violated its duty to third party beneficiary Colgate, and is therefore accountable to Colgate for Resolute's breach of the NICO-Resolute Contract.

54. Since early in the litigation of the Talc Cases, OneBeacon, NICO, and Resolute have systematically, both individually and in concert, endeavored to prevent Colgate from exercising its right to appoint independent defense counsel despite the existence of multiple conflicts of interest between OneBeacon, NICO, and Resolute on the one hand and Colgate on the other, and have refused payment of Colgate's reasonable defense costs. By interfering with Colgate's rights under the OneBeacon Policies, OneBeacon has breached the OneBeacon Policies, and Resolute

has violated its duty to carry out the obligations of the NICO-Resolute Contract in a manner that benefits an intended third party beneficiary of the contract, Colgate.

55. In addition, in placing its own interests ahead of its policyholder's and engaging in the bad faith conduct detailed herein, OneBeacon breached the implied covenant of good faith and fair dealing that exists in every insurance policy. Resolute, by consistently refusing to effect the promises contained in the OneBeacon Policies, tortiously interfered with the OneBeacon Policies, which are contracts between Colgate and OneBeacon.

56. Moreover, through their consistent bad faith conduct, both OneBeacon and Resolute violated Massachusetts General Laws Chapter 93A § 11 and New York General Business Law § 349.¹

57. Based on its present lack of knowledge of the NICO-OneBeacon contractual relationship, Colgate pleads in the alternative that (i) OneBeacon assigned the OneBeacon Policies to NICO and/or NICO assumed all duties and responsibilities under the OneBeacon Policies, and NICO breached those policies; or (ii) NICO tortiously interfered with the OneBeacon Policies.

THE COUNTERCLAIM PARTIES

58. Defendant and Counterclaim Plaintiff Colgate-Palmolive Company is a Delaware corporation with its principal place of business in New York.

¹ Colgate maintains that it will prevail in this dispute over the right to independent counsel under Massachusetts law or New York law—the two states with a significant relationship to this dispute. Since New York courts may be required to conduct a choice of law analysis whenever two states with a significant relationship have laws that vary substantively, this Court may be required to conduct a choice of law analysis. Therefore, Colgate references both Massachusetts and New York law herein.

59. Upon information and belief, Plaintiff and Counterclaim Defendant OneBeacon America Insurance Company is a Massachusetts corporation with its principal place of business in Massachusetts. Upon information and belief, OneBeacon America Insurance Company is the successor to Employers' Liability Assurance Corporation Limited, Employers' Commercial Union Insurance Company of America, Employers' Commercial Union Insurance Company, and Commercial Union Insurance Company, and is a member of the OneBeacon Group of Insurance Companies. Upon information and belief, OneBeacon has assumed all of the liabilities under the insurance policies sold to Colgate by these companies.

60. Upon information and belief, Counterclaim Defendant Resolute Management, Inc. is a Delaware corporation with its principal place of business in Nebraska.

61. Upon information and belief, Counterclaim Defendant National Indemnity Company is a Nebraska corporation with its principal place of business in Nebraska.²

² After commencement of this action, Colgate and Defendant Liberty Mutual Insurance Company ("Liberty") reached a settlement and therefore Colgate has not named Liberty as a Crossclaim Defendant.

JURISDICTION AND VENUE FOR THE COUNTERCLAIMS

62. An actual, immediate, and justiciable controversy exists among the parties concerning Colgate's right to independent counsel for defense of the Talc Cases.

63. This Court has jurisdiction over these Counterclaims pursuant to CPLR § 302(a)(1), because, upon information and belief, all parties transact business within the State of New York. This Court also has jurisdiction over this action pursuant to CPLR § 3001, which provides that this Court may render a declaratory judgment.

64. Venue in this Court is proper pursuant to CPLR § 503(a) and (c) because one or more parties is a resident of or has a principal place of business in New York County.

BACKGROUND FACTS

The OneBeacon Policies

65. OneBeacon sold to Colgate the primary liability insurance policies set forth in Attachment A to OneBeacon's First Amended Complaint (the "OneBeacon Primary Policies"). OneBeacon also sold to Colgate the umbrella/excess liability insurance policies set forth in Attachment A to OneBeacon's First Amended Complaint (the "OneBeacon Umbrella/Excess Policies").

66. Upon information and belief, OneBeacon also sold to Colgate the following liability insurance policies: Primary Liability Insurance Policy No. CLCB-9009-591, with policy period 1/1/73 – 1/1/74; Umbrella/Excess Liability Insurance Policy No. EB-9009-01----, with policy period 1/1/61 – 1/1/67; and Umbrella/Excess Liability Insurance Policy No. EB-9009-01----, with policy period 1/1/64 – 1/1/67.

67. In addition, upon information and belief, OneBeacon sold to Colgate additional primary or umbrella/excess liability policies.

68. Herein, the OneBeacon Primary Policies, the OneBeacon Umbrella/Excess Policies, and the additional liability insurance policies discussed in ¶¶ 66-67, *supra*, are collectively referred to as the “OneBeacon Policies.”

69. In pertinent part, the OneBeacon Primary Policies require OneBeacon to pay “all sums” which Colgate becomes legally obligated to pay as damages because of bodily injury or property damage such as that alleged in the Talc Cases.

70. The OneBeacon Primary Policies also state that OneBeacon has the obligation to defend Colgate against any suit seeking damages on account of “bodily injury or property damage, even if any of the allegations of the suit are groundless.”

71. Upon information and belief, in pertinent part, the OneBeacon Umbrella/Excess Policies require OneBeacon to pay “all sums” which Colgate becomes legally obligated to pay as damages because of bodily injury or property damage such as that alleged in the Talc Cases.

72. Upon information and belief, the OneBeacon Umbrella/Excess Policies require OneBeacon to pay defense expenses such as those incurred in the Talc Cases.

73. The OneBeacon Primary Policies and OneBeacon Umbrella/Excess Policies provide defense and indemnity coverage to Colgate for the Talc Cases.

The Relationship Between OneBeacon, NICO, and Resolute

74. NICO is one of the nation's largest reinsurance companies.

Resolute is NICO's primary claims handler.

75. NICO makes money by investing and earning returns on what is referred to as "float" capital—amounts that NICO presently possesses but that will eventually be paid to policyholders. Upon information and belief, NICO is incentivized to keep its policyholders' money as long as possible, in order to maximize the "float" and the return to investors that flows from it.

76. OneBeacon entered into two agreements with NICO that bear on the OneBeacon Policies. First, on March 15, 2001, OneBeacon, via its predecessor-in-interest CGU Insurance Company, entered into the Aggregate Loss Portfolio Reinsurance Agreement (the "Reinsurance Agreement") with NICO. The Reinsurance Agreement had an inception date of January 1, 2000. Upon information and belief, the Reinsurance Agreement specified that NICO would reinsure \$2.5 billion of OneBeacon's existing liabilities in exchange for a certain sum of money.

77. The Reinsurance Agreement was an example of retroactive insurance, the process by which a reinsurance company, in exchange for consideration of some form, receives certain unprofitable risks from the insurance company that originally took the risks. By ceding its risks to the reinsurance company, the original insurance company improves its balance sheet and gains peace of mind through knowing it will not have to deal with the ceded risks again. Upon information and belief, this is exactly what transpired via the Reinsurance Agreement—NICO accepted \$2.5

billion worth of OneBeacon's and/or related entities' risks in exchange for a sum of money.

78. In this case, upon information and belief, the Reinsurance Agreement included both OneBeacon and various related entities. The reinsurance available to OneBeacon and all other such entities was referred to as a reinsurance "pool," where all of the entities shared the cost required to secure the reinsurance. The "pool" of reinsurance could theoretically be used to reinsure unprofitable risks leading to claims under policies issued by OneBeacon or any of the related companies.

79. Second, on April 13, 2001, OneBeacon, again via CGU Insurance Company, entered into the Administrative Services Agreement (the "Services Agreement") with NICO. The Services Agreement requires NICO to "adjust, handle, agree, settle, pay, compromise or repudiate any claims, return premiums, reinsurance premiums or any other liability..." with respect to the OneBeacon Policies.

80. The Services Agreement permits NICO to employ third party contractors to perform NICO's obligations under the agreement. Upon information and belief, NICO, acting on that authorization, entered into the NICO-Resolute Contract to facilitate Resolute performing certain claims handling duties on NICO's behalf. The NICO-Resolute Contract did not create an agency relationship between NICO and Resolute, or between OneBeacon and Resolute.

81. Via the two agreements, NICO has become not only OneBeacon's reinsurance company, but also its claims handler. Upon information and belief, NICO also employs this same scheme with regard to the other insurance companies it reinsures and for which it handles claims. In all such cases, NICO is strongly

incentivized to handle claims with an eye on minimizing payouts, since every dollar that NICO can avoid paying as a claims handler is another dollar that NICO keeps as profit as a reinsurance company.

82. Neither of the NICO-OneBeacon agreements creates an agency relationship between NICO and OneBeacon. Upon information and belief, they are arm's length agreements that provide NICO with the contractual obligation to carry out OneBeacon's duties and responsibilities under the OneBeacon Policies in exchange for consideration.

83. Colgate was never informed that OneBeacon was entering into the contracts with NICO regarding OneBeacon's rights and obligations to Colgate under the OneBeacon Policies or that NICO had assumed all such rights and obligations.

84. Colgate herein pleads two causes of action against NICO in the alternative, breach of contract and tortious interference with contract. Colgate requires discovery in order to determine which of the causes of action accurately comports with the true relationship between NICO and OneBeacon. On one hand, OneBeacon may have assigned the OneBeacon Policies to NICO and/or NICO may have assumed the OneBeacon Policies, meaning that NICO has undertaken all OneBeacon's rights and obligations under those policies and that NICO is liable to policyholders like Colgate for breach of contract, just as OneBeacon is. If such an assignment and/or assumption occurred, NICO has breached the OneBeacon Policies.

85. On the other hand, if the facts show that there was not an assignment of the OneBeacon Policies to NICO and/or assumption of the OneBeacon Policies by NICO, NICO tortiously interfered in the OneBeacon Policies between

OneBeacon and Colgate. NICO was clearly aware of the OneBeacon Policies and intentionally caused OneBeacon to breach them for NICO's own pecuniary gain, namely in order to help NICO maximize its "float."

86. NICO, as a reinsurance company that does not sell insurance policies to members of the general public and has no need to seek future business from Colgate, has no incentive whatsoever to act fairly to Colgate or handle Colgate's claims in a manner that accords with professional standards of good faith and fair dealing.

87. As the party to whom NICO assigned certain of its obligations under the NICO-OneBeacon agreements, Resolute has no incentive to treat Colgate fairly for the same reasons set forth above.

The Proposed OneBeacon-Armour Acquisition

88. Since at least 2001, when the Reinsurance Agreement and Services Agreement were signed, OneBeacon's publicly traded parent company, OneBeacon Insurance Group, Ltd. ("OBIG"), has pursued its intention to shed its unprofitable outstanding A&E risks. Colgate's policies are one such risk, as demonstrated by the Talc Cases giving rise to this coverage litigation. Upon information and belief, there are many more policyholders, many with significant operations in New York, that will be equally affected by any such actions. These policyholders could number in the thousands.

89. This process came to a head in early 2013, when an OBIG entity proposed to sell all of its subsidiaries' remaining A&E risks to a subsidiary of Armour Group Holdings Limited ("Armour") (the "Proposed Acquisition"). According to its website, Armour "is a Bermuda based group of companies which focuses on identifying

structuring and transacting value opportunities within the insurance and reinsurance sectors.”

90. The Proposed Acquisition was publicly notified on February 7, 2013 via OBIG’s and Armour’s joint filing of a Form A Statement Regarding the Acquisition of Control of or Merger with a Domestic Insurer (the “Form A”), with the Pennsylvania Insurance Department (the “Department”).

91. OBIG and Armour have sought to file all information on which policyholders like Colgate could rely to assess the financial validity of the transaction under seal. Specifically, the documents filed fail to specify the amount of reserves that will accompany the acquired OneBeacon entities when they transition to Armour’s control if the Proposed Acquisition is approved. Indeed, in the pertinent Stock Purchase Agreement, OBIG and Armour explicitly acknowledge that there may be insufficient reserves to cover all outstanding claims if the Proposed Acquisition is approved:

...neither [OneBeacon] nor any of its Affiliates makes any representation or warranty (express or implied) ... with respect to: (a) the adequacy or sufficiency of the reserves of reinsurance of any Acquired Company ... [or] (c) ... [whether] the reserves of any Acquired Company have been or will be adequate or sufficient for the purposes for which they were established or that the reinsurance recoverables taken into account in determining the amount of such reserves will be collectible.

Stock Purchase Agreement § 7.8.

92. Beyond the possible insufficiency of reserves held by OneBeacon and the other entities proposed to be acquired, OneBeacon may not possess the reinsurance necessary to cover any shortfall in reserves. According to OBIG’s 2012 10-K filing, of the \$2.5 billion in reinsurance purchased via the Reinsurance Agreement to

cover OneBeacon's A&E claims, only \$198.3 million is not already allocated to existing claims.

93. Indeed, even without the aid of the various financial documents filed under seal, the above provision of the Stock Purchase Agreement makes explicit the fact that OneBeacon contemplates being unable to pay the valid future claims of policyholders like Colgate.

94. Just as NICO presently has no incentive to treat Colgate fairly because it is a reinsurance company that does not sell insurance policies to members of the general public, Armour is an entity solely concerned with maximizing return on investment for its investors. Armour has no incentive to protect the rights of the policyholders of acquired insurance companies in order to maximize return. If anything, Armour, whose business is maximizing return on investment by purchasing existing insurance risks and minimizing claims payments made under them, would have even less interest than NICO in treating Colgate fairly.

95. The Proposed Acquisition demonstrates that OneBeacon does not have the best interests of its policyholder, Colgate, in mind. Rather than ensuring that sufficient reserves and/or reinsurance are available to pay Colgate and other policyholders' claims, OneBeacon is attempting to transfer its obligations to Armour while acknowledging that Armour may possess insufficient capital to pay the claims.

96. The Proposed Acquisition therefore further demonstrates OneBeacon's failure to deal fairly and in good faith with Colgate and similarly situated policyholders.

The Talc Cases

97. Beginning in or about 2008 and continuing through the present, Colgate has been named as a defendant in various Talc Cases alleging bodily injury resulting from purported exposure to products manufactured by Colgate or its subsidiaries that allegedly contained asbestos. Since the Talc Cases permit proof of covered liability for alleged bodily injuries under the OneBeacon Policies, OneBeacon and/or NICO have a duty to defend, to pay defense costs, and to indemnify Colgate in the Talc Cases.

98. To date, twenty-two Talc Cases have been filed naming Colgate as a defendant, as set forth in Attachment A to these Counterclaims. The Talc Cases were filed in various jurisdictions across the country, including New York, Delaware, Pennsylvania, Rhode Island, Connecticut, Texas, Maryland, New Jersey, Washington, D.C. and Illinois.

99. Colgate is not a standard asbestos defendant insofar as it does not mine or distribute raw asbestos or manufacture or market asbestos-containing products. Therefore, Colgate is challenging the premise that its products contained any asbestos whatsoever and Colgate has mounted a vigorous defense of the Talc Cases to dissuade copy-cat suits. As a result of the vigorous defense strategy implemented by Colgate's independent defense counsel, Colgate has so far been successful in obtaining the dismissal of twelve of the Talc Cases.

Colgate's Right to Appoint Independent Defense Counsel Because of Conflicts of Interest With OneBeacon

100. Beginning on or about September 11, 2008, OneBeacon, via Resolute, began reserving its right to deny coverage for the Talc Cases on numerous

grounds, including but not limited to: (i) the potential for no coverage; (ii) the lack of an “occurrence” as defined by the OneBeacon Policies; (iii) the timing of the occurrence; (iv) the assertion that the alleged injuries may have been “expected or intended” by Colgate; and (v) the lack of coverage for punitive damages.

101. On October 15, 2010, OneBeacon issued a reservation of rights as to all present and future Talc Cases, based on the same reasoning as the earlier reservations of rights.

102. OneBeacon’s reservations of rights, read alongside the allegations of the Talc Cases, create a conflict of interest whereupon any counsel appointed by OneBeacon and/or NICO would be incentivized to defeat only those underlying claims that, if proven, would produce liability for OneBeacon and/or NICO under the OneBeacon Policies. Thus, for example, because (a) the Talc Cases have alleged “intentional” conduct and OneBeacon has reserved its rights to deny coverage for any “expected or intended” conduct; and (b) OneBeacon has reserved its rights to deny coverage based on some claims in the Talc Cases being within policy coverage and some outside policy coverage, a conflict of interest is created for any counsel appointed by OneBeacon, insofar as such counsel will have conflicting duties to OneBeacon/NICO and Colgate – on the one hand a duty to Colgate to defeat all claims, and on the other a duty to OneBeacon/NICO to defeat only those claims for which coverage would be afforded under the OneBeacon Policies.

103. Despite their legal obligation to do so at the time OneBeacon issued its reservations of rights, neither OneBeacon nor NICO nor Resolute informed Colgate of its right to independent defense counsel for the Talc Cases. Instead, in or

about late 2008, during the early stages of the litigation of the first two Talc Cases, *Bernard* and *Tedrick*,³ OneBeacon/NICO appointed the firm of McGivney & Kluger (“McGivney”) as Colgate’s defense counsel for the Talc Cases.

104. Over the course of 2009 and early 2010, Colgate’s and OneBeacon’s divergent litigation strategies emerged, creating a clear conflict of interest for any OneBeacon/NICO-appointed attorneys. While Colgate had determined that it would vigorously defend the Talc Cases and seek to defeat the claims in their entirety to deter copy-cat suits, OneBeacon’s and/or NICO’s strategy appeared to be to seek to minimize OneBeacon’s/NICO’s own expenditure on defense costs at the expense of mounting proper vigorous defense of any of the Talc Cases.

105. In or about March, 2010, because of the conflicts of interest created by OneBeacon’s reservation of rights and the parties’ divergent defense strategies, and because McGivney was prohibited from continuing to represent Colgate as a result of McGivney’s representation of a co-defendant in the Talc Cases, Colgate exercised its right to appoint independent counsel by appointing the law firm of Quinn Emanuel Urquhart & Sullivan, LLP (“Quinn Emanuel”) as its defense counsel in the Talc Cases.

106. Despite McGivney’s own admission that it could not continue to represent Colgate and Colgate’s retention of Quinn Emanuel, however, OneBeacon and Resolute maintained that McGivney should continue representing Colgate. OneBeacon and Resolute affirmatively resisted any replacement of McGivney, including by instructing their other appointed counsel to require all vendors in the Talc Cases,

³ *Tedrick* is now known as, and enumerated in Attachment A hereto as, *Konopka-Sauer*, because the original Plaintiff died and was replaced by her heirs, Lori Konopka-Sauer and Richard Konopka.

including experts, to continue to report to McGivney after McGivney had advised that it could not continue to represent Colgate.

107. After finally being forced to concede McGivney's conflict of interest (by McGivney's own withdrawal as defense counsel), and notwithstanding Colgate's appointment of Quinn Emanuel as defense counsel, subsequent to March, 2010, each time a new Talc Case was filed, and against Colgate's instructions, Resolute, on OneBeacon's and/or NICO's behalf, has attempted to install its own counsel in violation of Colgate's right to independent counsel. Moreover, the law firms Resolute has attempted to appoint more often than not would in any event have been unable to represent Colgate due to conflicts of interest. Thus, despite Quinn Emanuel having been appointed to defend the Talc Cases, Resolute purported to appoint the following firms, each of which had conflicts, to defend the Talc Cases:

- a. Barry, McTiernan & Moore: Unable to represent Colgate based on its representation of a co-defendant in one of the Talc Cases.
- b. Mound Cotton Wollan & Greengrass: Unable to represent Colgate because it is a leading insurance coverage defense firm and had represented an insurance company directly adverse to Colgate in a coverage dispute in 2009.
- c. DeHay Elliston: Unable to represent Colgate based on its representation of multiple co-defendants in several of the Talc Cases.
- d. Margolis Edelstein: Unable to represent Colgate because of its representation of a co-defendant in the Talc Cases.
- e. Foley & Mansfield: Unable to represent Colgate because of its lack of expertise in the relevant area of law.

108. Beginning in or about May, 2011, OneBeacon, NICO, and Resolute devised a new bad faith strategy to support OneBeacon's refusal to pay Colgate's defense costs in the Talc Cases: OneBeacon began purportedly "withdrawing" its

reservation of rights with regard to the defense of various Talc Cases. OneBeacon's purported "withdrawal" of its reservation of rights was ineffective and nothing more than a retroactive pretextual attempt to support its bad faith failure to fund Colgate's defense as required under the OneBeacon Policies.

109. OneBeacon's purported withdrawal of its reservation of rights also stated that, "[i]n the event [OneBeacon and/or Resolute] determine that Colgate has failed to comply with the cooperation conditions of the OneBeacon Policies or has prejudiced OneBeacon in connection with the defense or resolution of the [Talc Cases], [OneBeacon and/or Resolute] maintain the right to disclaim coverage...." In other words, despite stating that OneBeacon's reservation of rights was withdrawn, Resolute was nonetheless reserving OneBeacon's rights to deny coverage on other grounds.

110. Throughout the campaign to "withdraw" OneBeacon's previous reservations of rights, OneBeacon and Resolute willfully ignored the fact that on October 15, 2010, OneBeacon had reserved its rights to disclaim coverage as to all present and future Talc Cases. The purported "withdrawal" did nothing to remedy the parties' divergent litigation strategies.

OneBeacon/NICO/Resolute's Bad Faith Campaign to Sabotage Quinn Emanuel and Colgate

111. On May 19, 2010, shortly after retaining Quinn Emanuel, Colgate invited OneBeacon and Resolute to attend a meeting with Quinn Emanuel to discuss the Talc Cases going forward. Colgate's intention was—and remains—for Quinn Emanuel to make high-level strategic decisions with the day-to-day input of OneBeacon's and/or NICO's chosen general and local counsel.

112. Resolute Account Manager Peter Dinunzio (“Dinunzio”) explicitly rejected the May 19, 2010 invitation, stating that OneBeacon and Resolute already possessed sufficient information concerning the defense of the Talc Cases.

113. Despite this initial rejection, Colgate continued to regularly offer OneBeacon and Resolute the opportunity to meet with Quinn Emanuel and be involved in the defense of the Talc Cases. To date, OneBeacon has either ignored or declined those offers.⁴

114. On April 14, 2011, Dinunzio sent Colgate a letter asserting that OneBeacon intended unilaterally to contact the Talc Plaintiffs’ counsel and to informally resolve certain Talc Cases, without first communicating with Colgate and despite the inconsistency of such action with the litigation strategy Quinn Emanuel had designed and successfully implemented. As a result, Colgate was forced to demand that Dinunzio not make any such unauthorized contact with the Talc Plaintiffs’ counsel.

115. In or about January, 2013, despite Colgate’s appointment of Quinn Emanuel as lead defense counsel in the *Clemens* case, OneBeacon and/or NICO attempted to appoint Foley & Mansfield, LLP (“Foley”) as lead defense counsel. In complete disregard of Colgate’s instructions, OneBeacon and/or NICO apparently failed to instruct Foley that Colgate had not authorized that firm to act as its defense counsel

⁴ In addition to Colgate’s repeated offer to arrange a meeting between Quinn Emanuel and OneBeacon/Resolute, Colgate has voluntarily kept OneBeacon/Resolute apprised of the status of the Talc Cases. Colgate has issued written status updates to OneBeacon/Resolute on the following dates, among others: December 21, 2010; February 14, 2011; March 9, 2011; April 7, 2011; April 18, 2011; May 9, 2011; June 3, 2011; June 24, 2011; July 8, 2011; August 5, 2011; September 2, 2011; October 6, 2011; November 8, 2011; January 6, 2012; February 9, 2012; March 7, 2012; April 10, 2012; May 10, 2012; June 12, 2012; July 12, 2012; August 13, 2012; September 11, 2012; October 12, 2012; November 16, 2012; December 19, 2012; and January 17, 2013.

in *Clemens*. Without prior consultation with Colgate or Quinn Emanuel, Foley filed a substantive answer to the *Clemens* complaint, presumably at OneBeacon's and/or NICO's direction.

116. Having received Foley's unauthorized answer, the Plaintiff subsequently gave only Foley notice of the Plaintiff's recently scheduled deposition. As a result of the Plaintiff's understandable failure to communicate with Quinn Emanuel, Colgate's duly appointed lead counsel, Quinn Emanuel did not become aware of the Plaintiff's deposition until several days before it was scheduled to take place. Quinn Emanuel was therefore required to prepare for the deposition on short notice and conduct it without the benefit of Plaintiff's medical records, which Quinn Emanuel was unable to obtain on such short notice.

COUNT I

(Declaratory Judgment – OneBeacon and Resolute)

117. Colgate repeats and realleges the allegations of Paragraphs 50 through 116 as if fully set forth herein.

118. OneBeacon has reserved its rights to deny coverage for the Talc Cases; OneBeacon and Colgate have divergent views on defense strategy for the Talc Cases; and the Talc Cases include certain claims that are covered under the OneBeacon Policies and other claims which may not be covered under the OneBeacon Policies.

119. Accordingly, conflicts of interest exist between OneBeacon and Colgate with regard to the defense of the Talc Cases.

120. OneBeacon contracted with NICO, which in turn contracted with Resolute to oversee some of OneBeacon's obligations and responsibilities under the

OneBeacon Policies, including the discharge and administration of OneBeacon's duty to defend and to pay defense costs. As a party to the NICO-Resolute Contract, which is intended to benefit Colgate, Resolute has a separate and stand-alone duty to treat Colgate in accordance with the promises of the OneBeacon Policies.

121. OneBeacon has a duty to defend and pay reasonable defense costs in the Talc Cases pursuant to the OneBeacon Policies, and when a conflict of interest exists between an insurance company and its policyholder, the policyholder has the right to independent defense counsel, with reasonable fees paid by the insurance company.

122. Based on the conflicts of interest which have given rise to Colgate's right to independent counsel, OneBeacon and Resolute must recognize Colgate's right to independent counsel and pay Quinn Emanuel's reasonable fees.

123. OneBeacon, in breach of the liability insurance policies it sold to Colgate, and Resolute, in violation of its duty to Colgate as the intended beneficiary of the NICO-Resolute Contract, have repeatedly and improperly sought to deny Colgate's right to independent counsel in the Talc Cases.

124. Furthermore, OneBeacon and Resolute have actively sought to interfere with and obstruct Colgate's defense of the Talc Cases.

125. In breach of Colgate's right to independent counsel, OneBeacon and Resolute have wrongly refused to pay for the reasonable defense costs incurred or that will be incurred by Colgate in connection with Quinn Emanuel's defense of the Talc Cases.

126. By reason of the foregoing, an actual and justiciable controversy exists between OneBeacon/Resolute and Colgate regarding their respective rights and liabilities under the OneBeacon Policies.

127. Accordingly, Colgate is entitled under CPLR § 3001 to a judicial declaration from this Court that: (1) in light of the conflicts of interest between Colgate and OneBeacon/Resolute, OneBeacon's obligation to defend Colgate in the Talc Cases is converted to an obligation to fund Colgate's independent counsel in its defense of the Talc Cases; (2) Colgate did not breach the OneBeacon Policies by retaining independent defense counsel; (3) OneBeacon is obligated to pay Quinn Emanuel's past and future reasonable defense costs in connection with the Talc Cases; and (4) OneBeacon and Resolute are prohibited from obstructing Quinn Emanuel's defense of the Talc Cases in any way.

COUNT II

(Breach of Contract – OneBeacon)

128. Colgate repeats and re-alleges the allegations of paragraphs 50 through 127 as if fully set forth herein.

129. By selling the OneBeacon Policies to Colgate in exchange for substantial premiums from Colgate, OneBeacon created a contractual relationship with Colgate.

130. Under the terms of the OneBeacon Policies, OneBeacon is obligated to defend Colgate against any underlying claims that are reasonably likely to result in liability for OneBeacon. OneBeacon acknowledges its duty to defend.

131. When a conflict of interest exists between an insurance company and its policyholder, the policyholder is given the right to independent defense counsel,

and the insurance company's duty to defend takes the form of a duty to pay the reasonable fees of the policyholder's independent counsel. Moreover, when a conflict of interest arises, the insurance company is obligated to inform its policyholder of the policyholder's right to retain independent counsel.

132. Conflicts of interest exist between OneBeacon and Colgate because, amongst other things: OneBeacon has reserved its rights to deny coverage for the Talc Cases; OneBeacon and Colgate have divergent views on defense strategy for the Talc Cases; and the Talc Cases include certain claims that are covered under the OneBeacon Policies and other claims which may not be covered under the OneBeacon Policies.

133. Despite the multiple and continuing conflicts of interest that have arisen between OneBeacon and Colgate, OneBeacon has refused to acknowledge that Colgate has the right to independent counsel, refused to acknowledge Colgate's appointment of Quinn Emanuel as independent counsel, and refused to pay Quinn Emanuel's reasonable fees.

134. When the conflicts of interest between OneBeacon and Colgate arose, OneBeacon failed to inform Colgate of its right to appoint independent counsel.

135. Colgate has performed all of its duties consistent with the terms and conditions of the OneBeacon Policies.

136. Colgate has sustained damages as a result of the above conduct by OneBeacon.

137. Therefore, OneBeacon has breached the liability insurance policies it sold to Colgate (the OneBeacon Policies). By reason of OneBeacon's breach of the

OneBeacon Policies, OneBeacon is liable to Colgate for damages, including but not limited to compensatory and consequential damages, and reasonable attorneys' fees and expenses in amounts as yet to be ascertained and determined at trial. See *Mighty Midgets, Inc. v. Centennial Ins. Co.*, 47 N.Y.2d 12 (1979).

COUNT III
(Breach of Contract – NICO)

138. Colgate repeats and re-alleges the allegations of paragraphs 50 through 137 as if fully set forth herein.

139. Colgate pleads Count III and Count IV in the alternative.

140. By selling the OneBeacon Policies to Colgate in exchange for substantial premiums from Colgate, OneBeacon created a contractual relationship with Colgate.

141. By entering into the Reinsurance Agreement and the Services Agreement, OneBeacon partially assigned its rights and obligations under the OneBeacon Policies to NICO.

142. As the partial assignee of OneBeacon's rights and obligations, NICO is contractually obligated to Colgate to undertake such rights and obligations.

143. Under the terms of the OneBeacon Policies, NICO is obligated to defend Colgate against any underlying claims that are reasonably likely to result in liability for NICO. OneBeacon, assignor of the OneBeacon Policies, has acknowledged that the duty to defend is triggered by the Talc Cases.

144. In addition, or in the alternative, NICO assumed the rights and obligations under the OneBeacon Policies and is thereby contractually obligated to Colgate.

145. When a conflict of interest exists between an insurance company and its policyholder, the policyholder is given the right to independent defense counsel, and the insurance company's duty to defend takes the form of a duty to pay the reasonable fees of the policyholder's independent counsel. Moreover, when a conflict of interest arises, the insurance company is obligated to inform its policyholder of the policyholder's right to retain independent counsel.

146. Conflicts of interest exist between OneBeacon and Colgate because, among other things: NICO, as OneBeacon's assignee and/or having assumed the OneBeacon Policies, has reserved its rights to deny coverage for the Talc Cases; OneBeacon and Colgate have divergent views on defense strategy for the Talc Cases; and the Talc Cases include certain claims that are covered under the OneBeacon Policies and other claims which may not be covered under the OneBeacon Policies.

147. Despite the multiple and continuing conflicts of interest that have arisen between OneBeacon and NICO on one hand and Colgate on the other, NICO, as OneBeacon's assignee and/or having assumed the OneBeacon Policies, has refused to acknowledge that Colgate has the right to independent counsel, refused to acknowledge Colgate's appointment of Quinn Emanuel as independent counsel, and refused to pay Quinn Emanuel's reasonable fees.

148. When the conflicts of interest arose between OneBeacon and NICO on one hand and Colgate on the other, NICO, as OneBeacon's assignee and/or having assumed the OneBeacon Policies, failed to inform Colgate of its right to appoint independent counsel.

149. Colgate has performed all of its duties consistent with the terms and conditions of the OneBeacon Policies.

150. Colgate has sustained damages as a result of the above conduct by NICO. Therefore, NICO has breached the liability insurance policies sold to Colgate by OneBeacon, the assignor of the policies to NICO. By reason of NICO's breach of the OneBeacon Policies, NICO is liable to Colgate for damages, including but not limited to compensatory and consequential damages, and reasonable attorneys' fees and expenses in amounts as yet to be ascertained and determined at trial. *See Mighty Midgets, Inc. v. Centennial Ins. Co.*, 47 N.Y.2d 12 (1979).

COUNT IV

(Tortious Interference with Contract – NICO)

151. Colgate repeats and re-alleges the allegations of paragraphs 50 through 150 as if fully set forth herein.

152. Colgate pleads Count III and Count IV in the alternative.

153. In selling the OneBeacon Policies to Colgate and collecting substantial premiums from such policies, OneBeacon created a valid contractual relationship with Colgate.

154. NICO, with whom OneBeacon entered into the Services Agreement to conduct various claims handling tasks without Colgate's awareness or permission, was aware of the OneBeacon Policies between OneBeacon and Colgate, including OneBeacon's obligation to defend Colgate against underlying claims potentially covered by the OneBeacon Policies.

155. By entering into the Reinsurance Agreement with OneBeacon without Colgate's awareness or permission, NICO also became the reinsurer of certain

OneBeacon risks, which upon information and belief include Colgate's OneBeacon Policies. Therefore, NICO became not just the claims handler for the OneBeacon Policies, but also the reinsurer of those same policies. Therefore, NICO stood to directly benefit if its claims handling actions minimized the amounts paid out under the OneBeacon Policies.

156. Due to the conflict of interest between OneBeacon and Colgate, OneBeacon's duty to defend requires OneBeacon to pay the reasonable fees of independent defense counsel appointed by Colgate.

157. By failing to properly discharge OneBeacon's duty to pay the reasonable fees of Colgate's independent defense counsel, NICO procured a breach of the OneBeacon Policies.

158. NICO procured this breach of the OneBeacon Policies for the improper purpose of minimizing its own payout under the Reinsurance Agreement, despite OneBeacon's contractual obligations to Colgate to defend the Talc Cases in a manner aligned with Colgate's interests as OneBeacon's policyholder.

159. Colgate sustained damages as a result of the breach of the OneBeacon Policies knowingly and improperly procured by NICO, and NICO is liable to Colgate for damages and reasonable attorneys' fees and expenses in amounts as yet to be ascertained and determined at trial.

COUNT V

(Tortious Interference with Contract – Resolute)

160. Colgate repeats and re-alleges the allegations of paragraphs 50 through 159 as if fully set forth herein.

161. In selling the OneBeacon Policies to Colgate and collecting substantial premiums from such policies, OneBeacon created a valid contractual relationship with Colgate.

162. Resolute contracted with NICO to conduct various claims handling responsibilities that were previously contracted to NICO by OneBeacon. Resolute was aware of the OneBeacon Policies between OneBeacon and Colgate, including OneBeacon's obligation to defend Colgate against underlying claims potentially covered by the OneBeacon Policies.

163. Due to the conflict of interest between OneBeacon and Colgate, OneBeacon's duty to defend requires OneBeacon to pay the reasonable fees of independent defense counsel appointed by Colgate.

164. By refusing to properly discharge OneBeacon's duty to pay the reasonable fees of Colgate's independent defense counsel, Resolute procured a breach of the OneBeacon Policies.

165. Resolute procured this breach of the OneBeacon Policies for the improper purpose of minimizing OneBeacon's costs (and NICO's costs as reinsurer of the OneBeacon Policies), despite OneBeacon's contractual obligations to Colgate to defend the Talc Cases in a manner aligned with Colgate's interests as OneBeacon's policyholder.

166. Colgate sustained damages as a result of the breach of the OneBeacon Policies knowingly and improperly procured by Resolute, and Resolute is liable to Colgate for damages and reasonable attorneys' fees and expenses in amounts as yet to be ascertained and determined at trial.

COUNT VI

(Breach of the Implied Covenant of Good Faith and Fair Dealing – OneBeacon)

167. Colgate repeats and re-alleges the allegations of paragraphs 50 through 166 as if fully set forth herein.

168. By selling the OneBeacon Policies to Colgate in exchange for substantial premiums from Colgate, OneBeacon created a contractual relationship with Colgate. Implied in every contract is a covenant of good faith and fair dealing.

169. The implied covenant of good faith and fair dealing requires that OneBeacon deal fairly and in good faith with Colgate and do nothing to injure, frustrate, or interfere with Colgate's rights to receive the benefits and peace of mind it was promised under the OneBeacon Policies. OneBeacon's obligations under the OneBeacon Policies include defending Colgate against claims arising against it that are potentially within the scope of coverage under the policies or, if a conflict of interest arises between OneBeacon and Colgate, informing Colgate of its right, and permitting Colgate to appoint independent defense counsel, and paying the reasonable fees of such counsel.

170. Conflicts of interest exist between OneBeacon and Colgate based on the divergence in their respective litigation strategies, the presence of claims for both covered and non-covered damages in the Talc Cases, and OneBeacon's reservation of its rights to deny coverage for defense costs.

171. Based on the well-established conflicts of interest between OneBeacon and Colgate, Colgate exercised its right under the OneBeacon Policies to retain independent defense counsel.

172. Despite the fact that OneBeacon does not dispute indemnity coverage for damages arising from the Talc Cases, OneBeacon has refused and continues to refuse to provide coverage for reasonable defense costs incurred by Colgate's independent defense counsel.

173. Moreover, OneBeacon has actively interfered with Quinn Emanuel's administration of the Talc Cases as lead defense counsel, by, among other things: (i) repeatedly attempting to replace Quinn Emanuel with its own attorneys, most of whom are, by their own admission, unable to represent Colgate based on conflicts of interest or lack of experience in the relevant areas of law; (ii) refusing to communicate important information about the Talc Cases with Quinn Emanuel; (iii) refusing to promptly appoint local counsel for Quinn Emanuel despite Colgate's repeated requests, and sacrificing certain strategic advantages for Colgate by its delay; and (iv) refusing to acknowledge that Quinn Emanuel is Colgate's lead counsel for the Talc Cases.

174. OneBeacon inexplicably refused for more than two and a half years to sign a reasonable confidentiality agreement whose sole purpose was to protect potentially privileged communications regarding the defense of the Talc Cases from possible disclosure to third parties. Shortly after OneBeacon finally agreed to sign the agreement, Colgate promptly provided OneBeacon with all information necessary to review and analyze the costs Colgate has incurred from its representation by independent counsel, including sending OneBeacon unredacted copies of invoices reflecting the legal defense efforts undertaken to date by Quinn Emanuel and paid by Colgate.

175. In light of OneBeacon's admission of coverage under the OneBeacon Policies for damages arising from the Talc Cases, and its acknowledgement that the duty to defend is triggered, OneBeacon's refusal to pay Colgate's defense costs is arbitrary and capricious, and is evidence of OneBeacon's breach of the implied covenant of good faith and fair dealing.

176. Moreover, OneBeacon has also breached the implied covenant of good faith and fair dealing to Colgate by:

- Misrepresenting pertinent facts relating to coverages at issue;
- Failing to act reasonably promptly upon communications with respect to Colgate's claim for coverage;
- Willfully interpreting the OneBeacon Policies' insuring agreements, exclusions, and other provisions, and the factual circumstances herein, to resolve ambiguities and uncertainties against Colgate and in favor of its own interests;
- Deliberately or recklessly failing to place its policyholder's interests on equal footing with its own interests; and
- Affirmatively commencing litigation against Colgate for the purpose of denying Colgate the coverage for defense costs to which it is entitled under the OneBeacon Policies.

177. In addition, by delegating all of its rights and obligations to NICO, and/or permitting the assumption of the OneBeacon Policies by NICO, a third party with a direct financial incentive to minimize the payment of Colgate's claims, OneBeacon has violated its duty to carry out its obligations fairly and in good faith.

178. By refusing to pay the reasonable defense costs of Colgate's counsel and refusing to recognize Colgate's right to independent counsel, OneBeacon has breached the OneBeacon Policies' implied covenant of good faith and fair dealing. This breach constitutes an alternative ground for recovery of the defense costs,

including reasonable attorneys' fees, incurred by Colgate in connection with this insurance coverage dispute. Colgate is entitled to recover such fees and expenses, as damages, upon the presentation of an appropriate petition for same after trial herein.

179. OneBeacon initiated this action against Colgate, putting Colgate in a defensive litigation posture and entitling Colgate to reimbursement for attorneys' fees expended in conjunction with this action. See *Mighty Midgets, Inc. v. Centennial Ins. Co.*, 47 N.Y.2d 12 (1979).

COUNT VII

(Breach of the Implied Covenant of Good Faith and Fair Dealing – NICO)

180. Colgate repeats and re-alleges the allegations of paragraphs 50 through 179 as if fully set forth herein.

181. By selling the OneBeacon Policies to Colgate in exchange for substantial premiums from Colgate, OneBeacon created a contractual relationship with Colgate. NICO was assigned and/or assumed the OneBeacon Policies and the rights and obligations thereunder. Implied in every contract is a covenant of good faith and fair dealing. The implied covenant of good faith and fair dealing under the OneBeacon Policies was therefore assigned to and/or assumed by NICO.

182. The implied covenant of good faith and fair dealing requires that NICO deal fairly and in good faith with Colgate and do nothing to injure, frustrate, or interfere with Colgate's rights to receive the benefits and peace of mind it was promised under the OneBeacon Policies. NICO's obligations under the OneBeacon Policies include defending Colgate against claims arising against it that are potentially within the scope of coverage under the policies or, if a conflict of interest arises between

OneBeacon and Colgate, informing Colgate of its right, and permitting Colgate to appoint independent defense counsel, and paying the reasonable fees of such counsel.

183. Conflicts of interest exist between OneBeacon and Colgate based on the divergence in their respective litigation strategies, the presence of claims for both covered and non-covered damages in the Talc Cases, and OneBeacon's reservation of its rights to deny coverage for defense costs.

184. Based on the well-established conflicts of interest between OneBeacon and Colgate, Colgate exercised its right under the OneBeacon Policies to retain independent defense counsel.

185. Despite the fact that OneBeacon does not dispute indemnity coverage for damages arising from the Talc Cases, NICO, as assignee of or having assumed the OneBeacon Policies, has refused and continues to refuse to provide coverage for reasonable defense costs incurred by Colgate's independent defense counsel.

186. Moreover, NICO has actively interfered with Quinn Emanuel's administration of the Talc Cases as lead defense counsel, by, among other things: (i) repeatedly attempting to replace Quinn Emanuel with its own attorneys, most of whom are, by their own admission, unable to represent Colgate based on conflicts of interest or lack of experience in the relevant areas of law; (ii) refusing to communicate important information about the Talc Cases with Quinn Emanuel; (iii) refusing to promptly appoint local counsel for Quinn Emanuel despite Colgate's repeated requests, and sacrificing certain strategic advantages for Colgate by its delay; and (iv) refusing to acknowledge that Quinn Emanuel is Colgate's lead counsel for the Talc Cases.

187. NICO, as assignee of or having assumed the OneBeacon Policies, inexplicably refused for more than two and a half years to sign a reasonable confidentiality agreement whose sole purpose was to protect potentially privileged communications regarding the defense of the Talc Cases from possible disclosure to third parties. Shortly after NICO finally agreed to sign the agreement, Colgate promptly provided NICO with all information necessary to review and analyze the costs Colgate has incurred from its representation by independent counsel, including sending NICO, via Resolute, unredacted copies of invoices reflecting the legal defense efforts undertaken to date by Quinn Emanuel and paid by Colgate.

188. In light of OneBeacon's admission of coverage under the OneBeacon Policies for damages arising from the Talc Cases, and its acknowledgement that the duty to defend is triggered, NICO's refusal, as assignee of or having assumed the OneBeacon Policies, to pay Colgate's defense costs is arbitrary and capricious, and is evidence of NICO's breach of the implied covenant of good faith and fair dealing.

189. Moreover, NICO has also breached the implied covenant of good faith and fair dealing to Colgate by:

- Misrepresenting pertinent facts relating to coverages at issue;
- Failing to act reasonably promptly upon communications with respect to Colgate's claim for coverage;
- Willfully interpreting the OneBeacon Policies' insuring agreements, exclusions, and other provisions, and the factual circumstances herein, to resolve ambiguities and uncertainties against Colgate and in favor of its own interests; and
- Deliberately or recklessly failing to place its policyholder's interests on equal footing with its own interests.

190. By refusing to pay the reasonable defense costs of Colgate's counsel and refusing to recognize Colgate's right to independent counsel, NICO has breached the OneBeacon Policies' implied covenant of good faith and fair dealing. This breach constitutes an alternative ground for recovery of the defense costs, including reasonable attorneys' fees, incurred by Colgate in connection with this insurance coverage dispute. Colgate is entitled to recover such fees and expenses, as damages, upon the presentation of an appropriate petition for same after trial herein.

191. OneBeacon initiated this action against Colgate, putting Colgate in a defensive litigation posture and entitling Colgate to reimbursement for attorneys' fees expended in conjunction with this action. *See Mighty Midgets, Inc. v. Centennial Ins. Co.*, 47 N.Y.2d 12 (1979).

COUNT VIII

(Breach of Duty to Third Party Beneficiary – Resolute)

192. Colgate repeats and re-alleges the allegations of paragraphs 50 through 191 as if fully set forth herein.

193. Upon information and belief, NICO and Resolute executed the NICO-Resolute Contract to facilitate Resolute's performance of certain obligations under the OneBeacon Policies, including OneBeacon's duty to defend its policyholder, Colgate. The NICO-Resolute Contract is a valid and binding contract.

194. Upon information and belief, the NICO-Resolute Contract is intended to benefit Colgate by ensuring that OneBeacon and NICO fulfill all of their obligations to OneBeacon's policyholders, including Colgate.

195. Based on the contractual relationship between OneBeacon and Colgate, Resolute has a duty to Colgate to ensure that Colgate receives all of the benefits owed to Colgate under the OneBeacon Policies.

196. Colgate was an intended third party beneficiary of the NICO-Resolute Contract.

197. As an intended third party beneficiary of the NICO-Resolute Contract, Colgate is empowered to enforce the terms of that contract. Resolute, as contracting partner of NICO, has a duty to administer OneBeacon's obligations under the OneBeacon Policies. As set forth above, Resolute has failed to discharge its duty to defend or pay the defense costs of Colgate in the Talc Cases and violated the obligation to treat Colgate fairly and in good faith.

198. Therefore, Resolute has breached its contract with NICO and in doing so violated its duty to Colgate as an intended third party beneficiary of the NICO-Resolute Contract. By reason of Resolute's violation of its duty to Colgate, Resolute is liable to Colgate for damages, including but not limited to compensatory and consequential damages, and reasonable attorneys' fees and expenses in amounts as yet to be ascertained and determined at trial.

COUNT IX

(Massachusetts General Law c. 93A § 11 – OneBeacon and Resolute)

199. Colgate repeats and re-alleges the allegations of paragraphs 50 through 198 as if fully set forth herein.

200. At all times relevant to this case Colgate, OneBeacon and Resolute were engaged in the conduct of trade or commerce.

201. Under Massachusetts General Law (“M.G.L.”) c. 176D § 3(9), OneBeacon and Resolute are prohibited from engaging in various unfair insurance claims settlement practices. OneBeacon and Resolute have an affirmative duty to adjust claims fairly and promptly and abide by their other obligations under the OneBeacon Policies. OneBeacon and Resolute have failed in their duty, constituting a violation of M.G.L. c. 93A § 2. Colgate is empowered to seek a remedy for OneBeacon’s and Resolute’s violation of M.G.L. c. 93A § 2 under M.G.L. c. 93A § 11.

202. Conflicts of interest exist based on the divergent litigation strategies of Colgate on the one hand and OneBeacon and Resolute on the other hand, the presence of both covered and potentially non-covered claims in the Talc Cases, and OneBeacon reserving its rights to deny coverage for the Talc Cases.

203. Due to the conflicts of interest between Colgate on the one hand, and OneBeacon and Resolute on the other, Colgate is entitled to independent counsel in the Talc Cases.

204. In light of Colgate’s right to independent counsel, OneBeacon and Resolute failed their obligations under M.G.L. c. 176D § 3(9) in the following respects, among others:

(a) After conflicts of interest between OneBeacon/Resolute and Colgate became obvious and irreparable, OneBeacon/Resolute failed to acknowledge the conflicts and act as a reasonable insurance company would have by informing Colgate of its right to appoint independent counsel and respecting Colgate’s choice.

(b) In an effort to show that no conflicts of interest existed and that they were entitled to control Colgate's defense of the Talc Cases, OneBeacon and Resolute willfully misrepresented pertinent facts relating to the insurance coverages at issue, namely by: (i) claiming that the parties' litigation strategies did not diverge even though there is years' worth of written documentation of OneBeacon/Resolute's commitment to resolving the Talc Cases as quickly as possible regardless of the impact on Colgate; (ii) claiming that there are no conflicts of interest even when Talc Plaintiffs allege damages that would undeniably subject OneBeacon-appointed counsel to divided loyalties; and (iii) claiming that they would represent Colgate "without reservation" in the Talc Cases.

(c) Despite Colgate's appointment of Quinn Emanuel, OneBeacon and Resolute failed to effectuate prompt, fair and equitable payment of the reasonable fees incurred by Quinn Emanuel in its defense of the Talc Cases.

(d) Despite being fully aware of Colgate's interest in vigorously contesting liability in the Talc Cases to dissuade copy-cat suits, OneBeacon and Resolute deliberately and recklessly devised and attempted to implement a litigation strategy that is focused only on minimizing costs and jeopardizes the financial interests of its policyholder, Colgate.

(e) Despite Colgate's continuing effort to establish a cooperative relationship with OneBeacon and Resolute, OneBeacon and Resolute intentionally ignored Colgate's efforts at reasonable communication by, among

other things: (i) ignoring Colgate's repeated offer to have OneBeacon and/or Resolute coordinate with lead counsel Quinn Emanuel; and (ii) disregarding status updates on the Talc Cases that have been couriered to Resolute on a monthly basis ever since Quinn Emanuel was appointed lead counsel in early 2010.

205. By refusing to recognize Colgate's right to independent counsel, willfully interfering with Colgate's defense of the Talc Cases, and refusing to pay the reasonable defense costs of Colgate's counsel, OneBeacon and Resolute have failed to fulfill their obligations under M.G.L. c. 176D § 3(9), constituting unfair or deceptive acts or practices violating M.G.L. c. 93A § 2.

206. OneBeacon's and Resolute's violations of M.G.L. c. 93A § 2 were willful and knowing.

207. As a direct and foreseeable result of OneBeacon's and Resolute's unfair or deceptive acts or practices in violation of M.G.L. c. 93A § 2, as set forth above, Colgate has suffered a loss of money or property. Therefore, Colgate is entitled to damages under M.G.L. c. 93A § 11 as a result of OneBeacon's and Resolute's violations, in an amount to be proven at trial, to penalties to be assessed at three times the damages Colgate has sustained, and to reasonable attorneys' fees.

COUNT X

(New York State General Business Law § 349 – OneBeacon and Resolute)

208. Colgate repeats and re-alleges the allegations of paragraphs 50 through 207 as if fully set forth herein.

209. At all relevant times herein, OneBeacon and Resolute have been in the conduct of business, trade or commerce or in the furnishing of services in the State of New York.

210. As entities in the conduct of business, trade or commerce or in the furnishing of services in New York, OneBeacon and Resolute are prohibited from engaging in deceptive acts and practices pursuant to Section 349 of the New York State General Business Law (“N.Y.G.B.L. § 349”).

211. OneBeacon has engaged in deceptive acts by attempting to sell off its own unprofitable A&E risks via the Proposed Acquisition. OneBeacon’s policyholders, many of whom hold occurrence-based liability insurance policies purchased decades ago that still stand to provide valuable coverage for A&E claims, may be left with nowhere to turn for their insurance proceeds if the Proposed Acquisition is approved.

212. OneBeacon’s actions in structuring and seeking approval for the Proposed Acquisition, which would very likely leave insufficient assets to pay valid claims of policyholders such as Colgate, indicate that OneBeacon has previously misled the general public about the availability of insurance coverage under OneBeacon-issued policies.

213. The Proposed Acquisition will affect the general public in that it applies equally to Colgate and all other OneBeacon policyholders with pending or future claims under insurance policies being acquired by Armour. These policyholders may number in the thousands, and many likely have or had significant operations in New York.

214. Moreover, as an insurance company selling insurance policies in the State of New York, OneBeacon is governed by regulations promulgated by the Superintendent of Insurance of the New York State Insurance Department as set forth in 11 N.Y.C.R.R. § 216, *et seq.*, and under provisions of New York Insurance Law § 2601, prohibiting unfair claim settlement practices.

215. The New York Insurance Law prohibits and/or requires certain action by insurance companies and other relevant entities. Insurance companies who deviate from the following rules of play are deemed to have engaged in unfair claim settlement practices enumerated under New York Insurance Law § 2601:

- Insurance companies may not knowingly misrepresent to claimants pertinent facts or policy provisions relating to coverages at issue;
- Insurance companies may not fail to acknowledge with reasonable promptness pertinent communication as to claims arising under their policies; and
- Insurance companies may not fail to adopt and implement reasonable standards for the prompt investigation of claims arising under their policies.

216. Beyond the Proposed Acquisition, OneBeacon has engaged in various other deceptive acts and practices vis-à-vis Colgate that violate N.Y.G.B.L. § 349, including but not limited to: (i) refusing to accept Colgate's right to independent counsel in defense of the Talc Cases despite the obvious conflicts of interest between OneBeacon/Resolute and Colgate; (ii) intentionally interfering with Quinn Emanuel's defense of the Talc Cases; and (iii) threatening to unilaterally resolve certain Talc Cases without the consent of Colgate or Quinn Emanuel.

217. Upon information and belief, OneBeacon no longer sells general liability policies to the public at large.

218. Upon information and belief, during the period when it was selling general liability policies, OneBeacon engaged in a general practice of advertising, promoting and selling in New York policies of the type at issue in this action, all of which are consumer-oriented products that were designed and intended by OneBeacon to be purchased by the public at large in New York.

219. Liability insurance policies containing the usual insuring agreements and provisions of the OneBeacon Policies are consumer-oriented in that they are standard and were regularly sold by OneBeacon in New York in the inducement of consumers like Colgate in search of insurance protection.

220. Upon information and belief, OneBeacon engaged in a recurring pattern of selling standard language general liability policies that afford coverage for damages owed to third parties without warning its consumers that it regularly and routinely engages in unfair claims settlement practices that are barred under 11 N.Y.C.R.R. § 216, *et seq.*

221. Upon information and belief, during the period OneBeacon was selling general liability policies, OneBeacon engaged in the practice of advertising, promoting, and selling policies such as the OneBeacon Policies in New York by causing advertisements to be published in New York that make representations to the targeted public at large. These advertisements inappropriately lull consumers such as Colgate into believing that OneBeacon will provide not only comprehensive insurance coverage, but also fair and reasonable claim adjustment practices and procedures.

222. However, OneBeacon's practice of advertising, promoting and selling policies such as the OneBeacon Policies was deceptive and misleading to the

public at large in that OneBeacon has adopted and implemented a practice of unreasonably and in bad faith abandoning its obligations under its policies to treat its policyholders fairly and prioritize their interests.

223. OneBeacon's practices as described harm the public at large in a material way by misleading the public at large to rely upon insurance contracts with OneBeacon for peace of mind and an assurance that covered claims will be handled expeditiously and with the best interests of the policyholder in mind.

224. OneBeacon's actions not only have caused injury to Colgate, but, upon information and belief, have caused injury to numerous other similarly situated consumers and policyholders in New York.

225. Additionally, Resolute has engaged in various deceptive acts and practices vis-à-vis Colgate that violate N.Y.G.B.L. § 349, including but not limited to: (i) failing to notify Colgate of its right to independent counsel based on the obvious conflicts of interest between OneBeacon/Resolute and Colgate; (ii) refusing to accept Colgate's right to independent counsel in defense of the Talc Cases despite the obvious conflicts of interest between OneBeacon/Resolute and Colgate; (iii) intentionally interfering with Quinn Emanuel's defense of the Talc Cases; and (iv) threatening to unilaterally resolve certain Talc Cases without the consent of Colgate or Quinn Emanuel.

226. Upon information and belief, Resolute regularly contracts with NICO and other related insurance companies for the purpose of processing insurance claims and administering those insurance companies' obligations under the insurance policies they sold to their policyholders. Furthermore, upon information and belief,

Resolute is and has been engaged in a general pattern or practice of handling insurance claims in a manner designed to minimize the amounts paid out on behalf of policyholders, in order to maximize Resolute's profits and the profits of the insurance companies for whom Resolute serves as a third party claims handler.

227. Upon information and belief, it is Resolute's general pattern or practice to assume the defense of its policyholders in underlying lawsuits in the manner that best suits the interests of itself and the insurance companies with whom it contracts, by, among other things: (i) pursuing litigation strategies designed to minimize costs even if it means sacrificing the best interests of policyholders; (ii) refusing to cede control of policyholders' defense in the presence of factual circumstances which would confront Resolute-appointed counsel with unnavigable conflicts of interest; and (iii) refusing to take reasonable measures to communicate and cooperate with policyholders in the litigation of underlying claims and resolution of disputes between policyholders and their insurance companies with whom Resolute contracts.

228. The services furnished by Resolute are consumer-oriented in that Resolute is the entity with whom members of the general public holding insurance policies with various insurance companies interact in an attempt to secure the indemnity and defense coverage they have been promised. Resolute is in some respects the public face of the insurance companies for which it administers claims. Resolute's promises of fair and efficient treatment for policyholders induce consumers like Colgate that are in search of insurance protection.

229. Resolute's practices as described harm the public at large in a material way by misleading the public at large to rely upon insurance contracts with

Resolute's contracting partners for peace of mind and an assurance that covered claims will be handled expeditiously and with the best interests of the policyholder in mind.

230. Colgate stands to be injured and damaged by reason of OneBeacon's Proposed Acquisition in that OneBeacon, or NICO as assignee of or having assumed the OneBeacon Policies, may be rendered incapable of paying valid claims for coverage under the OneBeacon Policies arising from the Talc Cases.

231. Colgate has been injured and damaged by reason of OneBeacon's and Resolute's deceptive and misleading acts in that ever since the first conflict of interest with OneBeacon emerged, Colgate has been entitled to independent counsel but has been forced to fund such independent counsel entirely out of its own pocket. Moreover, by engaging in such deceptive and misleading acts with other policyholders in New York, OneBeacon has engaged in unfair claim settlement practices prohibited under New York law.

232. As a direct and proximate result of the practices and acts of OneBeacon and Resolute, Colgate has incurred actual injury in New York.

233. OneBeacon's and Resolute's violations of N.Y.G.B.L. § 349 were and continue to be willful and knowing.

234. By reason of the foregoing, Colgate is entitled to damages as a result of OneBeacon's and Resolute's violations, in an amount to be proven at trial, penalties to be assessed at three times the damages Colgate has sustained, and reasonable attorneys' fees.

RELIEF REQUESTED

WHEREFORE, Colgate respectfully requests that this Court enter judgment in its favor and against OneBeacon, NICO, and Resolute:

- a) With respect to Count I, declaring that OneBeacon and Resolute are now and will continue to be obligated to fund the costs of Colgate's duly appointed independent defense counsel and indemnify Colgate under the OneBeacon Policies in connection with the Talc Cases;
- b) With respect to Count II, finding that OneBeacon has breached the OneBeacon Policies by refusing to fund the costs of Colgate's duly appointed independent defense counsel in the Talc Cases, and granting an award against OneBeacon of compensatory and consequential damages and attorneys' fees and costs, in an amount to be determined at trial, plus pre- and post-judgment interest;
- c) With respect to Count III, finding that NICO has breached the OneBeacon Policies by refusing to fund the costs of Colgate's duly appointed independent defense counsel in the Talc Cases, and granting an award against NICO of compensatory and consequential damages and attorneys' fees and costs, in an amount to be determined at trial, plus pre- and post-judgment interest;
- d) With respect to Count IV, finding that NICO has tortiously interfered with Colgate's ability to obtain the rights and benefits for which it bargained in its contractual relationship with OneBeacon, and granting an award against NICO of compensatory and consequential damages and attorneys' fees and costs, in an amount to be determined at trial, plus pre- and post-judgment interest;
- e) With respect to Count V, finding that Resolute has tortiously interfered with Colgate's ability to obtain the rights and benefits for which it bargained in its contractual relationship with OneBeacon, and granting an award against Resolute of compensatory and consequential damages and attorneys' fees and costs, in an amount to be determined at trial, plus pre- and post-judgment interest;
- f) With respect to Count VI, finding that OneBeacon has breached the covenant of good faith and fair dealing implied in each of the

OneBeacon Policies, and granting an award against OneBeacon of compensatory and consequential damages and attorneys' fees and costs, in an amount to be determined at trial, plus pre- and post-judgment interest;

- g) With respect to County VII, finding that NICO has breached the covenant of good faith and fair dealing implied in each of the OneBeacon Policies, and granting an award against NICO of compensatory and consequential damages and attorneys' fees and costs, in an amount to be determined at trial, plus pre- and post-judgment interest;
- h) With respect to Count VIII, finding that Resolute has violated its duty to Colgate as the intended third party beneficiary of the contract between NICO and Resolute by refusing to fund the costs of Colgate's duly appointed independent defense counsel in the Talc Cases, and granting an award against Resolute of compensatory and consequential damages and attorneys' fees and costs, in an amount to be determined at trial, plus pre- and post-judgment interest;
- i) With respect to Count IX, under Massachusetts General Laws Chapter 93A § 11, granting an award against OneBeacon and Resolute of the remedies provided thereunder, including compensatory and consequential damages and attorneys' fees and costs in an amount to be determined at trial, plus penalties to be assessed at three times the damages Colgate has sustained, plus pre- and post-judgment interest;
- j) With respect to Count X, under New York General Business Law § 349, granting an award against OneBeacon and Resolute of the remedies provided thereunder, including compensatory and consequential damages and attorneys' fees and costs in an amount to be determined at trial, plus penalties to be assessed at three times the damages Colgate has sustained, plus pre- and post-judgment interest; and
- k) With respect to all Counts, that this Court award Colgate all costs of suit and reasonable attorneys' fees and costs (*see Mighty Midgets, Inc. v. Centennial Ins. Co.*, 47 N.Y.2d 12 (1979)), pre- and post-judgment interest, and all other relief in law or equity that this Court may deem just and appropriate.

DEMAND FOR JURY TRIAL

Colgate demands trial by jury on all issues so triable.

Dated: May 28, 2013
New York, New York

ANDERSON KILL & OLICK, P.C.

By: /s/ Alexander D. Hardiman
William G. Passannante, Esq.
Alexander D. Hardiman, Esq.
Diana Shaffer Gliedman, Esq.
Nicholas R. Maxwell, Esq.
1251 Avenue of the Americas
New York, NY 10020
Telephone: (212) 278-1000
Facsimile: (212) 278-1733

*Attorneys for Defendant and
Counterclaim Plaintiff
Colgate-Palmolive Company*

ATTACHMENT A

1.	<i>Shelly Bernard v. Brookfield Properties Corp., et al.</i> , Index No. 08/107211, New York Supreme Court, New York County
2.	<i>Lori Konopka-Sauer and Richard Konopka v. Colgate-Palmolive Co.</i> , Index No. 08/190078, New York Supreme Court, New York County
3.	<i>Frank X. Helstab and Melinda J. Helstab v. Aetna Health, Inc., et al.</i> , Index No. 10/190157, New York Supreme Court, New York County
4.	<i>Robert E. Andrews v. "42" Products, Inc., et al. / In re: Asbestos Litigation</i> , Civil Action No. PC 2010-0775, Rhode Island Superior Court, Providence County
5.	<i>Sumiko Cavallero v. Agway, Inc., et al. / In re: Bridgeport Asbestos Litigation</i> , FBT-CV-10-6008022-S, Connecticut Superior Court, Judicial District of Fairfield at Bridgeport
6.	<i>Clovis C. Roberts, et al. v. American Biltrite, Inc., et al.</i> , Civil Action No. PC 2010-6888, Rhode Island Superior Court, Providence/Bristol County
7.	<i>Jamie Barton et al. v. Able Supply Company, et al.</i> , Case No. 2009-74117, Texas District Court, Harris County
8.	<i>Dorothy P. Hayman, et al. v. Bridgestone Americas Tire Operations, LLC, et al.</i> , Case No. N10C-09-148 ASB, Superior Court of Delaware, New Castle County
9.	<i>Arlene Feinberg and Jacob Feinberg v. Colgate-Palmolive Co., et al.</i> , Index No. 2011-11190070, New York Supreme Court, New York County
10.	<i>Lynn and Charles Demont v. American Biltrite, Inc., et al.</i> , Case No. 1002-0404, Pennsylvania Court of Common Pleas, Philadelphia County
11.	<i>Beverly J. Collier v. American Biltrite, Inc., et al.</i> , Civil Action No. 2007-5753, Rhode Island Superior Court, Providence County
12.	<i>Janet Vieley and Daniel Bentley v. American Biltrite, et al.</i> , Case No. 113452, Rhode Island Superior Court, Providence/Bristol County
13.	<i>Claudine Milone and Joseph Milone v. American Household, Inc., et al.</i> , Case No. CV-11-6020932-S, Connecticut Superior Court, Judicial District of Fairfield at Bridgeport
14.	<i>Clara G. Mosko v. John Crane-Houdaille, Inc., et al.</i> , Circuit Court for Baltimore City, Maryland
15.	<i>Marguerite Wolf v. John Crane-Houdaille, Inc., et al.</i> , Circuit Court for Baltimore City, Maryland
16.	<i>Joyce Barlow v. John Crane-Houdaille, Inc., et al.</i> , Circuit Court for Baltimore City, Maryland
17.	<i>Kristi Lescalleet v. John Crane-Houdaille, Inc., et al.</i> , Circuit Court for Baltimore City, Maryland
18.	<i>Tanja Silver v. A.J. Friedman Supply Co., Inc.</i> , Docket No. MID-L-849-12, New Jersey Superior Court, Middlesex County
19.	<i>Elisa Belen v. Union Carbide Corp., et al.</i> , Case No. 0001513-12, District of Columbia Superior Court, Civil Division
20.	<i>Bonita Wittmer v. Alvin & Company, Inc. et al.</i> , New York Supreme Court, Erie County

21.	<i>Kathleen McKissick v. Borg-Warner Corp.</i> , MID-L-232-13, New Jersey Superior Court, Middlesex County
22.	<i>Gary Clemens v. Aeroquip Corp., et al.</i> , No. 12-L-1888, Illinois Circuit Court, Madison County

SCRIPPS